

September 23, 2005

The Honorable Donald E. Powell
Chairman
Federal Deposit Insurance Corporation
550 Seventeenth St., N.W.
Washington, DC 20429

Mr. John F. Carter
San Francisco Regional Director
Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square, Suite 2300
San Francisco, California 94105

Re: Wal-Mart Bank Deposit Insurance Application

Dear Chairman Powell and Mr. Carter:

In response to the publication of Wal-Mart Bank's application for deposit insurance, the New York Bankers Association is submitting these comments. Our Association opposes the grant of deposit insurance to Wal-Mart Bank (the Bank) because of the competitive inequities that authorization for Wal-Mart to participate in the banking business would generate. Our Association is comprised of the community, regional and money center banks doing business in New York State. Our members have more than 320,000 New York employees and aggregate assets in excess of \$3 trillion.

Wal-Mart Bank, a Utah-State-chartered industrial loan company (ILC), chartered as a subsidiary of Wal-Mart, the world's largest retailing organization, has applied to the Corporation for federal deposit insurance. Under the Federal Deposit Insurance Act, the Corporation must apply seven factors in determining whether to grant deposit insurance (12 U.S.C. section 1816), among them "the convenience and needs of the community to be served," and "whether the depository institution's corporate powers are consistent with the purposes of" the Act. Our Association believes that Wal-Mart Bank's application fails to satisfy these factors because the Bank would have an inherent conflict of interest impossible to reconcile under existing law, would present significant competitive inequities with regard to other insured institutions, and fails to recognize the Bank's obligations under the Community Reinvestment Act. These reasons, we believe, would support a decision by the Corporation to deny the application.

The Honorable Donald E. Powell
Mr. John F. Carter
September 23, 2005
Page 2

Wal-Mart Bank's application states that the principal business of the Bank will be "to serve as the required depository institution sponsor into the electronic payments systems in connection with retail sales by Wal-Mart and its subsidiaries." Economically, legally and historically, the nation's banking system has served as the guardian of the payments system, ensuring that access to the system is provided on a non-discriminatory basis and preventing access without proper safety and soundness controls. One of the major safety and soundness controls on access to the system is the independent judgment of depository institutions that must place their capital at risk to back the payments transactions made by their customers. Clearly, where a depository institution is a wholly-owned subsidiary of a major retailing, industrial or commercial institution, that independent judgment will be compromised. For these reasons, Congress has imposed a clear legal dividing line between banking and commerce and restricted the ability of non-financial corporations to gain access to the payments system. American corporate, economic and banking history has shown that subsidiary corporations do not always have the ability to deny requests by parent corporations for access to the payments system. Therefore, Wal-Mart Bank's application presents an irremediable conflict of interest inconsistent with the purposes of the FDI Act.

Moreover, it seems likely that Wal-Mart Bank would be unable to provide access to the payments system on a non-discriminatory basis to other, similarly situated retailing organizations. Competitors to Wal-Mart who believe that they need access to the payments system similar to that proposed to be provided by Wal-Mart Bank would be foreclosed from using the services of the Bank. This monopolistic restriction on the services of a particular banking organization is inconsistent with the purposes of the banking system.

In addition, Wal-Mart, the parent of Wal-Mart Bank, would not be subject to regulation either as a financial holding company or as a depository institution holding company, creating a significant competitive imbalance with traditional depository institutions. Regulated bank, thrift and financial holding companies are subject to regulatory and statutory capital standards, examination requirements, privacy standards and other legal and supervisory controls that would not apply to Wal-Mart. Recognizing the inequity of applying holding company level regulation to one type of holding company but not to holding companies for industrial loan companies, Congress passed the Gramm-Leach-Bliley Act, which required competitors to have comparable regulation and consolidated supervision. While it did not ban ILCs, the size and complexity of these companies at that time was modest, and the parent corporations were not

The Honorable Donald E. Powell
Mr. John F. Carter
September 23, 2005
Page 3

the largest commercial firms in the country. ILCs have changed dramatically since then. We urge the Corporation to consider the evolving policy of the Congress as reflected in this legislation and to refuse to approve this application on the basis of its competitive impact on other insured institutions and their holding companies.

Wal-Mart Bank, in its application also states that, as a limited purpose bank, it is "exempt from CRA regulations" and "a CRA plan is not included with this application." This statement is in direct contradiction not only to the Community Reinvestment Act itself, but also to the regulations adopted by all of the federal banking agencies implementing CRA. The Community Reinvestment Act by its terms applies to all insured depository institutions (12 U.S.C. section 2902). In order to accommodate the competitive circumstances of wholesale and limited purpose banks, the regulators provided that such banks would be judged by a community development test (12 CFR section 345.25). However, this provision is manifestly not an exemption from CRA, but rather a recognition that certain financial institutions are not in business to provide retail services to the general public in the ordinary course of business.

The community development test for limited purpose banks provides that regulators will assess a bank's record of helping to meet the credit needs of its assessment area through its community development lending, qualified investments, or community development services. The failure of Wal-Mart Bank's application to even recognize that it has a CRA obligation that must be fulfilled demonstrates the Bank's failure to meet the convenience and needs test in the FDI Act. Moreover, the failure of the Bank to file a CRA plan makes it impossible for the Corporation to assess the Bank's CRA record, as required by 12 U.S.C. section 2902 (a)(3)(B) (applications required to be assessed by the regulators include "deposit insurance in connection with a newly chartered State bank....").

For these reasons, the New York Bankers Association opposes this application and urges that it be disapproved.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Smith", with a stylized flourish at the end.

Michael P. Smith